

APPEAL NO. 040164
FILED MARCH 1, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on January 8, 2004. The hearing officer resolved the disputed issue by deciding that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the seventh quarter. The claimant appealed the hearing officer's decision and the respondent (carrier) filed a response.

DECISION

Affirmed.

Eligibility criteria for SIBs entitlement are set forth in Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102). The SIBs criterion in dispute is whether the claimant made a good faith effort to obtain employment commensurate with her ability to work during the qualifying period for the seventh quarter.

Rule 130.102(d)(5) provides that an employee has made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee has provided sufficient documentation as described in subsection (e) to show that he or she has made a good faith effort to obtain employment. Rule 130.102(e) provides in part that except as provided in subsection (d)(1), (2), (3), and (4) of Rule 130.102, an injured employee who has not returned to work and is able to return to work in any capacity shall look for employment commensurate with his or her ability to work every week of the qualifying period and document his or her job search efforts. Rule 130.102(e) then lists information to consider in determining whether the injured employee has made a good faith effort to obtain employment, including, among other things, the number of jobs applied for, the type of jobs sought by the employee, the amount of time spent in attempting to find employment, and any job search plan by the injured employee.

While the claimant did not document a job search for the period of July 13 through July 21, 2003, she did document a job search in each week of the qualifying period, with the first week of the 13-week qualifying period beginning on the first day of the qualifying period, May 24, 2003. See Texas Workers' Compensation Commission Appeal No. 002163-s, decided November 1, 2000, and Texas Workers' Compensation Commission Appeal No. 021923, decided September 17, 2002. However, it is clear from the hearing officer's decision that although she noted that the claimant looked for work twice per week, she was not persuaded that the claimant was contacting employers in a good faith effort to obtain employment, but was instead attempting to qualify for SIBs. The hearing officer found that the claimant did not make a good faith effort to obtain employment commensurate with her ability to work, and concluded that

the claimant is not entitled to SIBs for the seventh quarter. The hearing officer is the sole judge of the weight and credibility to be given to the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. Although there is conflicting evidence in this case, we conclude that the hearing officer's decision is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

We affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **TEXAS PROPERTY & CASUALTY INSURANCE GUARANTY ASSOCIATION for Reliance National Insurance Company, an impaired carrier** and the name and address of its registered agent for service of process is

**MARVIN KELLY
9120 BURNETT ROAD
AUSTIN, TEXAS 78758**

Robert W. Potts
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Chris Cowan
Appeals Judge